

REMARKS

This Application has been carefully reviewed in light of the Office Action dated December 8, 2009 ("Office Action"). Claims 1-11, 34-35, and 40-45 are pending, Claim 1 is allowed, and Claims 2-11 are rejected in the application. Applicants respectfully request reconsideration and allowance of all pending claims.

Allowable Subject Matter

Applicants note with appreciation the Examiner's indication that Claim 1 is allowed and Claims 2-11 would be allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, second paragraph.

Pursuant to 37 C.F.R. § 1.104, Applicants respectfully issue a statement commenting on the Examiner's reasons for allowance. Applicants respectfully disagree with the Examiner's reasons for allowance to the extent that they are inconsistent with applicable case law, statutes, and regulations. Furthermore, Applicants do not admit to any characterization or limitation of the claims or to any characterization of a reference by the Examiner, particularly any that are inconsistent with the language of the claims considered in their entirety and including all of their constituent limitations.

Claim Rejections - 35 U.S.C. § 112

The Examiner rejects Claims 2-11 under 35 U.S.C. § 112, second paragraph, as being incomplete for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. While Applicants do not acquiesce to the Examiner's rejection, in an effort to expedite prosecution of the pending Application, Applicants amend Claims 2-11 as requested. Applicants respectfully submit that each of the example structures and steps identified in the Office Action are **example embodiments** described in the Specification, and exemplary embodiments from the Specification are not "necessary" for purposes of 35 U.S.C. 112, second paragraph. Applicants also submit these amendments are not an admission that any of the recited structure or steps is "necessary."

Accordingly, for at least these reasons, Applicants respectfully request reconsideration and allowance of Dependent Claims 2-12.

Claims 34-35 and 40-45

The most recent Office Action does not state the status of currently pending Claims 34-35 and 40-45. Applicants respectfully submit that Claims 34 and 40 are allowable for reasons similar to Claim 1. Applicants further respectfully submit that Dependent Claims 35 and 41-45 are allowable as dependent from Independent Claims 34 and 40, respectively.¹

Rejoinder of Withdrawn Claims

On May 5, 2008, the Patent Office issued an Election/Restriction Requirement. The Election/Restriction Requirement identified three Groups: Claims 1-11, 34, 35, and 40-45; Claims 12-22, 36-37, 46-51; and Claims 23-33, 38, 39, 52-57. Election/Restriction Requirement at 2. Applicants elected Group I for prosecution. In the event that the Patent Office determines that all Claims from Group I are allowable, Applicants respectfully request that the Patent Office withdraw the Election/Restriction Requirement.

“The propriety of a restriction requirement should be reconsidered when all the claims directed to the elected invention are in condition for allowance.” M.P.E.P. § 821.04. “In order to be eligible for rejoinder, a claim to a nonelected invention must depend from or otherwise require all the limitations of an allowable claim.” M.P.E.P. § 821.04. Additionally, “if applicant elects a claim(s) directed to a product which is subsequently found allowable, withdrawn process claims which depend from or otherwise require all the limitations of an allowable product claim will be considered for rejoinder.” M.P.E.P. § 821.04(b).

In the event that the Patent Office determines that all Claims from Group I are allowable, Applicants respectfully request that the Patent Office withdraw the Election/Restriction Requirement. To the extent the Patent Office requires amendments to Groups II and III based on corresponding amendments to Group I, Applicants are prepared to submit such amendments and/or authorize a corresponding Examiner’s amendment.

¹ To the extent that the Patent Office requires amendments to Claims 35-39 and 41-45 based on corresponding amendments to Claims 2-11, Applicants are prepared to submit such amendments and/or authorize a corresponding Examiner’s amendment.

No Waiver

All of Applicants' arguments are without prejudice or disclaimer. Applicants reserve the right to discuss the distinctions between the applied art and the claims in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the anticipation and obviousness rejections.

CONCLUSION

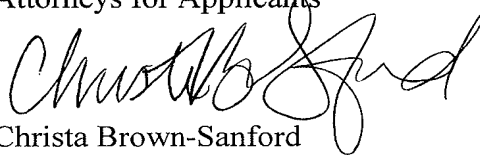
Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicants respectfully request reconsideration and full allowance of all pending claims.

If there are matters that can be discussed by telephone to further the prosecution of this Application, Applicants invite the Examiner to call the undersigned attorney at (214) 953-6824 at the Examiner's convenience.

Applicants believe that no fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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